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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,747	11/20/2001	Ihor A. Lys	C01104/70094 RFG/JT	9668
23628	7590	05/03/2004	EXAMINER	
WOLF GREENFIELD & SACKS, PC FEDERAL RESERVE PLAZA 600 ATLANTIC AVENUE BOSTON, MA 02210-2211			PHILOGENE, HAISSA	
			ART UNIT	PAPER NUMBER
			2821	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/989,747

Applicant(s)

LYS ET AL.

Examiner

Haissa Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 23-41 is/are rejected.
- 7) ☒ Claim(s) 21, 22, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

Claims 4, 7 and 11 are objected to because of the following informalities: In claim 4, line 4, change "an" to --said--. In claim 7, line 1, change "method" to --system--. In claim 11, change "claim 11" to --claim 4-- . Appropriate correction is required.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 1 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 09/989,677. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 4-8, 10-12, 15-18, 23, 25-29, 31-33 and 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Reber et al., Patent No. 5,798,694.

As per claims 2 and 23, Reber discloses in Figs 1 and 5 a storage place having a food storage apparatus 22 readable as a package indicator and method thereof which comprises at least one LED 36 (see Col.3, lines 60-62), a controller 62 for generating and communicating control signals to the at least one LED 36 wherein the controller 62 is associated with a program input therein for receiving signals from sensor 34 indicative of environmental conditions (temperature, humidity, food quality, acidity) (see Col.3, lines 44-49), and said sensor 34 communicating signals to the program input of the controller 62.

As per claims 4 and 25, Reber discloses in Fig.5 a system and method for indicating a condition of an item (20, 26) which comprises an illumination system 36 for providing illumination suitable for conveying information and capable of receiving input from an information system 30 (see Col.3, lines 24-26), and said information system 30 for providing input to the illumination system 36 (as shown), wherein the information system 30 provides information about the item 20 and the illumination system 36 is controlled via processor 62 to provide illumination that indicates the information (see also Col.3, lines 56-57).

As per claims 5, 6, 26 and 27, Reber further discloses the item (26, 20) being a container containing food and the illumination system 36 indicating information about the condition of the container containing food (see Col.3, lines 56-57) and said container

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containing food (26, 20) associated with the cover 28 being readable as forming as a package.

As per claims 7 and 28, Reber further discloses the item being a container 26 for a food item 20 (see Col.2, lines 44-54).

As per claims 8 and 29, Reber further discloses the condition being selected from at least elapsed time, exposure to temperature, cold, heat humidity or microbe (see Col.5, lines 48-55 and Col.3, line 18 and lines 45-49).

As per claims 10-12 and 31-33, Reber further discloses the illumination system 36 indicating exposure of a package (26, 28) for a perishable food item 20 to an environmental condition (see Col.2, lines 36-45); said environmental condition capable of being heat (see Col.3, line 18) or passage of an amount of time in excess of a selected amount of time (see Col.4, lines 49-61 and Col.5, lines 35-37).

As per claims 15 and 36, Reber further discloses the illumination system 36 illuminated to provide a visual indication, numerical indication or graphical indication (see Col.3, line 67-Col.4, line 2), readable as changing illumination, indicative of a measure of the condition such as when the food item is exposed to temperatures that exceed a predetermined acceptable range (40 °F) (see Col.4, lines 49-57).

As per claims 16, 17, 37 and 38, Reber further discloses the information system 30 tracking a plurality of environmental conditions via memory 60 and the illumination system 36 illuminating the item (26, 20) to reflect the different environmental conditions., a sensor 34 for receiving signals to supply the information system 30 with information (see Col.5, lines 49-55).

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As per claims 18 and 39, Reber further discloses a transmitter 66 for transmitting information from the information system 30, in particular from the processor 62, about the item to the tag communicating device 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 13, 14, 24, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al in view of Parkhurst et al. Patent No. 5,412,372.

As per claim 1, Reber discloses in Fig.5 a method of providing information which comprises a receiver 64 for receiving an information signal from the tag communicating device 32, providing an LED illumination device 36 with an inherent input connection to receive an illumination control signal, providing a processor 62 capable of converting the information signal into the illumination control signal and communicating said control signal to the input connection wherein the illumination device 36 (see Col.3, line 67- Col.4, line 2) changes to provide numerical indication or graphical indication corresponding the information signal . Reber does not disclose the illumination device changing color. Parkhurst discloses in Fig.4 and 10 an information method having at least an LED illumination device 132 which changes color (red, green) upon control to indicate whether it is time to administer a medication. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the

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LED illumination device as taught by Parkhurst into the Reber type system. This can be done by replacing the Reber's LED element with the Parkhurst's LED illumination device. Thus, it would allow upon a particular illumination an indicating control that is easy to use and more reliable to perform monitoring functions.

As per claims 3 and 24, Reber discloses the claimed invention substantially as explained above. Reber does not explicitly disclose two or more LEDs. Parkhurst discloses in Figs. 4 and 10 a package indicator 30 having two or more indicator lights (390-396) that may be LEDs (see Col.7, lines 50-51 and Fig.10) to indicate whether it is time to administer a medication. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the two or more LEDs as taught by Parkhurst into the Reber type package indicator. This can be done by replacing the Reber's LED element with the Parkhurst's two or more LEDs. Thus, it would allow upon a particular illumination an indicating control that is easy to use, inexpensive and more accurate for monitoring functions.

As per claims 13, 14, 34 and 35, Reber discloses the claimed invention substantially as explained above except for an illumination system being gradually changed to a selected color or red with the passage of time. Parkhurst discloses in Figs. 4 and 10 an indicating system having an illumination system 132 being gradually changed to a selected color (red or green) with the passage of time (see Col.7, lines 46-54). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the illumination system as taught by Parkhurst into the Reber type system. This can be done by replacing the Reber's illumination system with the

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Parkhurst's illumination system. Thus, it would allow upon a particular illumination an indicating control that is effective and more accurate for monitoring functions.

Claims 9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al in view of Kazar, Patent No. 4,870,325.

Reber discloses the claimed invention substantially as explained above. Reber does not disclose the illumination system controlling lighting elements by PWM. However, this feature is well-known in the art as evidenced by Kazar which discloses an indicating system (see Col.2, lines 46-51) with an illumination system (Fig.1) controlling via control means 1 lighting elements (7, 9) by at least PWM (see Col.7, lines 30-35) It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a PWM control as taught by Kazar into the Reber type system, because it would allow a pulsing operation as to control the length of time each device is selected and thereby the color produced by the device.

Claims 19, 20, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reber et al in view of Moore, Patent No. 5,592,561.

As per claims 19 and 40, Reber discloses the claimed invention substantially as explained above except for the information system obtaining information about shipping events from a printer operator and the illumination system indicating information about shipping events. Moore discloses an indicating system having a host computer readable as an information system 14 which obtains information about shipping events from a

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printer operator (see Col.17, lines 44-47) and a field reader readable (18, 90) as an illumination system indicating information about shipping events (goods properly marked and packaged for shipment). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the information system and the illumination system as taught by Moore into the Reber type system, because it would ensure authentication of consumer goods to reduce the amount of counterfeit goods, thereby improving the efficacy of the system.

As per claims 20 and 41, Reber in view of Moore discloses the claimed invention substantially as explained above. Further, Moore discloses the illumination system (18, 90) providing illumination via lamp 96 for reflecting information regarding the captured symbols or marks via camera 29 and then providing it to the host computer 14 via a PC 22 useful for maintaining records or maintaining inventory in a facility (factory, department store...) through inspection (see at least Col.21, lines 38-50).

Allowable Subject Matter

Claims 21, 22, 42 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior fails to disclose "the information system stores first information for controlling illumination prior to an item being displayed for retail purposes and second information for controlling illumination when the item is being displayed for retail purposes".

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Castle et al., Patent No. 4,992,775.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haissa Philogene whose telephone number is (571) 272-1827. The examiner can normally be reached on 6:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571)272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hp

Haissa Philogene
Primary Examiner
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